

NATIONAL ACCOUNT PROGRAM
SOFTWARE LICENSE AGREEMENT

This SOFTWARE LICENSE AGREEMENT is entered into as of February, 1993 by TOUCHFAX INFORMATION SYSTEMS, INC., a Kansas corporation ("TouchFax") and TON SERVICES, INC., a Utah corporation ("Licensee").

RECITALS

- A. TouchFax is a manufacturer of public access facsimile, communication and information retrieval terminals which offer an array of Services provided through computer software developed, acquired and/or made available by TouchFax.
- B. Licensee and TouchFax have entered into an Equipment Purchase Agreement ("Purchase Agreement"), under which Licensee will acquire terminals from TouchFax. The parties desire to provide for a limited license to Licensee of TouchFax's proprietary computer software in order to enable the terminals to provide the Services available through the software.
- C. Licensee may have or develop software Modules which perform various Services for Licensee. Licensee may desire to integrate its software Modules with TouchFax's proprietary software, and TouchFax is willing to develop Interface Programs for that purpose.
- D. Licensee may desire to create its own executable programs for the terminals, and TouchFax is willing to provide a development tool kit for that purpose.
- E. Licensee may also desire to provide for the creation of additional software by TouchFax in the event Licensee develop concepts for other Services during the term of this Agreement, a TouchFax is willing to develop that software.

AGREEMENT

In consideration of the foregoing and the mutual promises covenants contained herein, TouchFax and Licensee agree as f

ARTICLE I - DEFINITIONS

1.1 "Basic Services" shall mean the TouchFax Services made available to Licensee as of the date of this Agreement and described in Schedule 1.1. Certain Basic Services may or may not bear Transaction Fees, as described in the Schedule.

1.2 "Custom Software" shall mean any computer software program developed by TouchFax (other than a Tool Kit) for the purpose of enabling Designated Systems to provide one or more Licensee Services. Each Custom Software program shall constitute Licensed Software, as defined in Section 1.8.

1.3 "Designated Hardware" shall mean the cash or magnetic credit, charge or proprietary card-activated, public-access facsimile, communication and information retrieval terminals (a) manufactured by or on behalf of TouchFax, (b) acquired by Licensee pursuant to the Purchase Agreement and (c) on which the Licensed Software shall operate. Schedule 1.3 lists the site location and serial number of each unit of Designated Hardware. In order to enable TouchFax to protect its interest in the Licensed Software and meet its responsibilities to Third Party Licensors, Licensee shall update Schedule 1.3 not less often than monthly.

1.4 "Designated System" shall mean, collectively, the Licensed Software and Designated Hardware.

1.5 "End User" shall mean any person who commences a transaction on or makes any use of a Designated System to obtain or communicate information or access Services.

1.6 "Interface Program" shall mean any computer software program developed by TouchFax for the purpose of integrating a Licensee Module into the code structure of the Licensed Software. Each Interface Program shall constitute Licensed Software, as defined in Section 1.8. Interface Programs are intended as interim solutions until completion of the Tool Kit.

1.7 "License Fees" shall mean the Licensee Fees payable under this Agreement and described in Section 6.1.

1.8 "Licensed Software" shall mean all applications computer programs recorded in object code (i.e., machine readable) form only that are owned, made, acquired, developed or created by or licensed to TouchFax and are furnished to Licensee hereunder. For purposes of this Agreement, Licensed Software shall include any and all enhancements, modifications, improvements, conversions, updates, additions, new releases and all related supporting documentation of the Licensed Software, but shall not include the Source Code, as defined in Section 1.13. Licensed Software shall also include all

Custom Software, Interface Programs and the Tool Kit, but shall not include any Licensee Module.

1.9 "Licensee Module" shall mean any computer software module developed by or licensed to Licensee which performs Services for Licensee. The initial Licensee Modules are identified in Schedule 1.9.

1.10 "Licensee Service" shall mean any Service concept which Licensee desires be made available to End Users through Custom Software developed by TouchFax.

1.11 "New Service" shall mean any future Service developed and/or acquired by TouchFax which is generally offered by TouchFax to its other licensees during the term of this Agreement. TouchFax shall notify Licensee of any New Services which become available during the term of this Agreement, together with the License Fees and any Transaction Fees payable for such Services, and Licensee shall have the option to acquire such New Services in return for those License Fees and Transaction Fees. Any New Services selected by Licensee, together with the License Fees and any Transaction Fees applicable thereto, will be described in Schedule 1.11.

1.12 "Services" shall mean, collectively, TouchFax Services, Licensee Services and Services provided through a Licensee Module, or any one or more of them, as the context shall imply.

1.13 "Source Code" shall mean one or more source codes that relate to the Licensed Software, in original human readable text or programming language, regardless of the media or manner of recordation or storage.

1.14 "Territory" shall mean the United States, Canada and Mexico. In order that TouchFax may advise Licensee regarding foreign licensing and permitting regulations of which it has knowledge, Licensee shall give TouchFax prior written notice of the proposed location of any Designated Systems in Canada or Mexico. However, TouchFax shall be under no duty to advise Licensee on foreign legal compliance, which shall be the sole responsibility of Licensee.

1.15 "Third Party Licensor" shall mean any entity from which TouchFax obtains a license or other right to offer any TouchFax Service which was not originally developed by TouchFax.

1.16 "Tool Kit" shall mean one or more object code linkable routines in the Licensed Software libraries developed by TouchFax and designed to enable Licensee to create executable programs for Designated Systems, provided the Tool Kit routines are incorporated in such a way that they cannot be used apart from those applications. The Tool Kit shall constitute Licensed Software, as

defined in Section 1.8. Tool Kit routines may not be operated on any system other than Designated Systems. Any software developed by third parties and incorporated into the Tool Kit will be sublicensed to Licensee subject to Licensee's payment of applicable fee or royalty obligations to those third parties. TouchFax currently has a Tool Kit under development that will be made available to Licensee upon completion.

1.17 "TouchFax Button" shall mean an electronic touch screen "button" through which End Users may access one or more TouchFax Services. Each Designated System shall prominently feature a TouchFax Button on the main menu unless otherwise agreed by TouchFax.

1.18 "TouchFax Services" shall mean the Basic Services and any New Services selected by Licensee.

1.19 "TouchNet System" shall mean TouchFax's management system for the remote communication of system usage data and the performance of software uploads/downloads and other network services.

1.20 "Trademarks" shall mean any and all trademarks, service marks, trade names, trade dress and/or "get-up" of TouchFax, whether or not registered by TouchFax, and all goodwill of the business related thereto, including but not limited to the trademarks/trade names "TouchFax," "TouchFax Information Systems," "TouchNet" and "Stay in Touch with the World," and all logos and symbols used in connection therewith.

1.21 "Transaction Fee" shall mean the wholesale access cost assessed by TouchFax for certain TouchFax Service transactions commenced by End Users. For instance, "Funny Bone Fax" is a Basic Service made available on a consignment basis by TouchFax. When End Users access the Funny Bone Fax Service, TouchFax will assess a wholesale price for each billable transaction, which will be billed to Licensee as a Transaction Fee. Any costs or royalties owed to third parties on account of such transactions will be paid by TouchFax from the Transaction Fees. The Basic Services for which Transaction Fees may or may not be payable are identified in Schedule 1.1. Any New Services for which Transaction Fees are payable will be identified in Schedule 1.11.

ARTICLE II - LICENSE AND TITLE

2.1 License.

2.1.1 TouchFax Services. Subject to the terms and conditions of this Agreement, TouchFax grants to Licensee under all of TouchFax's intellectual property rights (including patents and copyrights owned or controlled by TouchFax) and Licensee accepts, a non-exclusive non-transferable license to use the Licensed Software anywhere in the Territory for the purpose of offering TouchFax Services to End Users of Designated Systems.

2.1.2 Interface Programs. Subject to the terms and conditions of this Agreement, TouchFax grants to Licensee under all of TouchFax's intellectual property rights (including patents and copyrights owned or controlled by TouchFax) and Licensee accepts, an exclusive non-transferable license to use any Interface Program anywhere in the Territory for the purpose of integrating into the Source Code(s) for the Licensed Software the Licensee Module(s) for which that Interface Program was developed. Licensee grants to TouchFax a limited, nonexclusive and non-transferable license to utilize the Licensee Modules and all components thereof for the purpose of developing Interface Programs. TouchFax may not resell or exploit any Licensee Modules except pursuant to a separate written agreement between Licensee and TouchFax.

2.1.3 Custom Software. Subject to the terms and conditions of this Agreement, TouchFax grants to Licensee under all of TouchFax's intellectual property rights (including patents and copyrights owned or controlled by TouchFax) and Licensee accepts, an exclusive non-transferable license to use any Custom Software anywhere in the Territory for the purpose of offering Licensee Services to Licensee or any affiliate of Licensee and to End Users of Designated Systems. Notwithstanding TouchFax's ownership of all Custom Software as referred to in Section 2.2, TouchFax shall not use for its own account any Custom Software in its original form, nor license or permit any other party to use the same, whether or not for compensation, without the prior written consent of Licensee.

2.1.4 Tool Kit. Subject to the terms and conditions of this Agreement, TouchFax grants to Licensee under all of TouchFax's intellectual property rights (including patents and copyrights owned or controlled by TouchFax) and Licensee accepts, a non-exclusive non-transferrable license to use the Tool Kit anywhere in the Territory for the sole purpose of creating source codes for executable programs to operate on

Designated Systems. The Tool Kit routines may be used by Licensee solely for that purpose and may not be distributed, sold, licensed or otherwise profited from by Licensee, either independently or as part of any other software.

2.2 Title. The Licensed Software (including all Interface Programs, Custom Software and the Tool Kit), all trade secrets, source codes, object codes and other intellectual property rights therein, all goodwill of the business arising thereunder and all copyrights, patents and other protections applicable thereto, are proprietary to and shall be and remain the sole property of TouchFax, subject only to the rights of Third Party Licensors and the limitations in Section 2.1. Licensee shall acquire no right, title, interest or claim whatsoever in any of the Licensed Software, other than the limited license contemplated hereby. Licensee shall not contest TouchFax's ownership of the Licensed Software or any of the Trademarks, and may not sublicense the Licensed Software or any rights hereunder without the written consent of TouchFax.

2.3 Non-Exclusivity. Licensee acknowledges that certain TouchFax Services may perform the same or similar functions as Licensee Services or Services provided through Licensee Modules. Provided TouchFax complies with its confidentiality obligations under Article X, TouchFax may (a) acquire, develop, create, sell, lease, use or commercialize for its own account or license to others any TouchFax Service, whether or not it is similar to any Licensee Service or Service offered through a Licensee Module; (b) acquire, develop, create, sell, lease, use or commercialize for its own account or license to others any computer software; (c) permit any other licensee to integrate its services into Designated Systems or TouchFax's software, whether or not such services are similar to any Licensee Services or Services provided through Licensee Modules, and develop and license software for that purpose; (d) acquire, develop, create, sell, lease, use or commercialize for its own account or license to others any tool kit developed by TouchFax or others, whether or not it is similar to the Tool Kit; and (e) sell, lease, use or commercialize for its own account or license to others one or more components of any Interface Program, Custom Software or the Tool Kit, as well as concepts, ideas, methods or processes which were utilized in the development of or which are embodied by any Interface Programs, Custom Software or the Tool Kit.

ARTICLE III - DEVELOPMENT OF INTERFACE PROGRAMS

3.1 Information. If Licensee desires that TouchFax develop any Interface Program, Licensee shall provide TouchFax with all information reasonably required for that purpose.

3.2 Development Protocol. TouchFax and Licensee shall agree to a Protocol for the development, testing and delivery of the Interface Program. The Protocol shall specify the estimated development schedule, the assistance and information to be provided by Licensee, test protocols, delivery and installation terms, and other matters deemed desirable by TouchFax and Licensee. Each Protocol shall be attached under Schedule 3.2 to this Agreement and shall guide development of the Interface Program. TouchFax shall use its best efforts to conform to the development schedule contained in the Protocol.

ARTICLE IV - DEVELOPMENT OF CUSTOM SOFTWARE

4.1 Information. If Licensee desires to make any Licensee Service available to End Users, Licensee shall provide TouchFax with all information reasonably required for the development of Custom Software for that purpose.

4.2 Development Protocol. TouchFax and Licensee shall agree to a Protocol for the development, testing and delivery of any Custom Software. The Protocol shall specify the functions to be performed by the Custom Software, the estimated development schedule, the assistance and information to be provided by Licensee, test protocols, delivery and installation terms, and other matters deemed desirable by TouchFax and Licensee. Each Protocol shall be attached under Schedule 4.2 to this Agreement and shall guide development of the Custom Software. TouchFax shall use its best efforts to conform to the development schedule contained in the Protocol.

ARTICLE V - CASH READER

5.1 Development of Cash Reader. Upon the request of Licensee, TouchFax shall use its best efforts to develop a cash reader and accompanying software for Designated Systems, provided TouchFax is given adequate specifications and lead time for that purpose.

ARTICLE VI - COMPENSATION

6.1 License Fees.

6.1.1 Licensee shall pay ongoing, continuing License Fees for the Basic Services in the amount of \$1,100 per Designated System unit per year, payable in quarterly

installments of \$275 each. License Fees for each unit shall commence with the quarter in which the unit is delivered to Licensee and, except as permitted under Section 6.1.3, shall continue each quarter thereafter during the term of this Agreement. The License Fee for the quarter in which a unit is delivered shall be prorated as of the installation date.

6.1.2 After Licensee has paid Cumulative License Fees in the amount of \$5,000 on any Designated System unit, the License Fee for that unit shall be decreased to \$600 per year, payable in quarterly installments of \$150 each.

6.1.3 Licensee may remove the Licensed Software from any unit of Designated Hardware after giving TouchFax written notice thereof and paying a Cumulative License Fee on that unit in the amount of \$5,000, minus all License Fees theretofore paid on that unit. Upon TouchFax's receipt of the Cumulative License Fee, Licensee shall be free to cease using the Licensed Software on that unit and may substitute thereon any other software; provided, Licensee shall not thereafter use any of the Licensed Software on that unit without again paying continuing License Fees at the rate set forth in this Article VI. All copies of any Licensed Software removed from a unit of Designated Hardware shall be promptly returned to TouchFax, together with a certificate executed by a responsible officer of Licensee representing that Licensee is no longer operating the Licensed Software on that unit and undertaking to notify TouchFax if use of the Licensed Software on that unit resumes. Payment of the Cumulative License Fee on any unit shall not relieve Licensee of its obligation to pay continuing License Fees or the Cumulative License Fee on any other units.

6.1.4 If Licensee selects any New Services during the term of this Agreement, Licensee shall pay License Fees for those Services at the rates specified by TouchFax and described in Schedule 1.11. Payment of such License Fees shall be governed by the terms of this Agreement unless otherwise provided in the Schedule.

6.2 Transaction Fees. TouchFax shall be entitled to charge Transaction Fees to Licensee at the rates described in Schedule 1.1 or 1.11 for the commencement by End Users of those TouchFax Services for which Transaction Fees are payable.

6.3 Programming Charges and Expenses.

6.3.1 TouchFax shall be compensated for development of Interface Programs and any Custom Software at the rate of \$65 per hour for all time spent by employees and/or contractors of TouchFax engaged in such development ("Programming Charges").

All development time shall be recorded in quarter hour increments. Programming Charges shall be subject to increase not more often than once each calendar year upon prior notice by TouchFax. There shall be no minimum or maximum Programming Charge for any development project unless otherwise agreed by TouchFax.

6.3.2 In addition to Programming Charges, Licensee shall reimburse TouchFax for all reasonable out-of-pocket expenses ("Reimbursable Expenses") incurred by TouchFax in the development of any Interface Program or Custom Software, including travel expenses, long distance telephone charges, facsimile charges and materials, but not including overhead unless otherwise agreed by Licensee.

ARTICLE VII - BILLING AND PAYMENT

7.1 License Fees. License Fees shall be paid in quarterly installments without notice or invoice on January 1, April 1, July 1 and October 1 of each year during the term of this Agreement.

7.2 TouchNet System; Billing Service Fees and Billing for Transaction Fees. The TouchNet System may be utilized in connection with Licensee's operation of Designated Systems. Licensee shall have the option of operating the TouchNet System for its own account or to retain TouchFax to do so.

7.2.2 If TouchFax provides network services under the TouchNet System, Licensee shall pay TouchFax a Billing Service Fee in the amount of \$50 per month for each Designated System unit in operation during the previous month. All long distance telephone charges applicable to the billing process shall be paid from the Billing Service Fee. TouchFax shall prepare and submit to Licensee a monthly invoice for all Transaction Fees incurred during the previous month and shall deliver a copy of its billing file in an agreed-upon format and content on a daily basis.

7.2.3 If Licensee desires to provide network services under the TouchNet System, Licensee may acquire all equipment for that purpose in accordance with a separate agreement between TouchFax and Licensee. If Licensee operates the TouchNet System or any other remote management system, Licensee shall deliver to TouchFax a monthly report of all access to TouchFax Services for which Transaction Fees are payable. The report shall be due by the last day of each month and shall identify each unit accessed by serial number, the Services accessed, the date and time of each transaction, the duration of each transaction in minutes and seconds, the End User's transaction cost, and any other information

reasonably required by TouchFax. All Transaction Fees payable on account of such Services shall be paid with the report.

7.3 Billing for Programming Charges, Reimbursable Expenses and Billing Service Fees. Programming Charges, Reimbursable Expenses and Billing Service Fees will be invoiced by TouchFax.

7.4 Payment of Transaction Fees, Programming Charges, Reimbursable Expenses and Billing Service Fees. Transaction Fees shall be paid in full by Licensee within 30 days after the date of TouchFax's invoice under Section 7.2.2 or with Licensee's monthly report under Section 7.2.3, as applicable. Programming Charges, Reimbursable Expenses and Billing Service Fees shall be paid in full by Licensee within 30 days after the date of each invoice.

7.5 Taxes. All payments by Licensee shall be accompanied by payment in full of all local, state, provincial and federal sales, use and other taxes and assessments owed by Licensee or which TouchFax is required to collect from Licensee and pay to governmental authorities on account of amounts payable hereunder.

7.6 Late Penalty Charges. In the event any License Fees, Transaction Fees, Programming Charges, Reimbursable Expenses or Billing Service Fees remain due and unpaid in excess of 30 days after the due date therefor, the same shall bear a late penalty charge of 1.5% per month (18% per annum) until fully paid.

7.7 Method of Payment.

7.7.1 All payments by Licensee shall be made by bank check or wire transfer in immediately available funds.

7.7.2 Acceptance or endorsement by TouchFax of any instrument for less than the full amount due shall not be deemed an acceptance of payment in full, and any conditions to the contrary in or accompanying Licensee's documentation or instrument of payment shall not be binding on TouchFax, whether or not TouchFax has knowledge thereof.

7.8 Audit. All records and accounts of Licensee which are reasonably required for determining the amount of Transaction Fees due under this Agreement shall be subject to audit by an independent auditor approved by TouchFax and Licensee not more often than once each year during normal business hours, upon not less than five business days' prior written notice to Licensee. Licensee shall cooperate in any such examination and produce, at Licensee's place of business or another mutually acceptable location, all records reasonably requested by the auditor. If, as a result of such audit, it is determined Licensee underpaid any Transaction Fees, then Licensee shall submit the balance due within 30 days after delivery of the auditor's report. If the audit

determines such payments were understated by a factor of greater than five percent, then Licensee shall also pay the cost of the audit unless the deficiency was the fault of TouchFax. If it is determined Licensee overpaid any Transaction Fees, such excess shall be reimbursed by TouchFax (in a form other than by credit) within 30 days after delivery of the auditor's report making such determination.

ARTICLE VIII - DELIVERY AND INSTALLATION

8.1 Delivery and Installation. Unless otherwise agreed in writing by TouchFax and Licensee, the Licensed Software, in object code form only, shall be installed by TouchFax or its designee as part of and delivered to Licensee with each unit of Designated Hardware. Delivery and installation of any Interface Program or Custom Software shall be governed by the relevant Development Protocol or by separate agreement between TouchFax and Licensee.

ARTICLE IX - LIMITED WARRANTY

9.1 Limited Warranty and Warranty Limitation. TouchFax warrants that for a period of one year from the date of delivery of a Designated System or any new release of the Licensed Software to Licensee or a location specified by Licensee, TouchFax shall, upon written notice from Licensee, use reasonable efforts to correct any error or defect which prevents the Licensed Software from operating in conformity with the documentation provided by TouchFax or from meeting TouchFax's standard applicable specifications. THIS WARRANTY IS EXPRESSLY CONDITIONED UPON LICENSEE'S PROPER USE AND (UNLESS LICENSEE HAS ENTERED INTO A SERVICE CONTRACT WITH TOUCHFAX) MAINTENANCE AND REPAIR OF DESIGNATED SYSTEMS IN ACCORDANCE WITH TOUCHFAX'S SPECIFICATIONS, INSTRUCTIONS AND DOCUMENTATION, AND SHALL NOT APPLY IF A DESIGNATED SYSTEM FAILS TO PERFORM DUE TO MODIFICATIONS MADE IN THE LICENSED SOFTWARE OR THE DESIGNATED HARDWARE BY OR ON BEHALF OF LICENSEE OR BY TOUCHFAX PURSUANT TO SPECIFICATIONS SUPPLIED BY LICENSEE, OR DUE TO ACCIDENT; NEGLIGENCE; MISUSE; FAILURE OF ELECTRICAL POWER, AIR CONDITIONING OR HUMIDITY CONTROL; TRANSPORTATION; OR ANY CAUSE OTHER THAN ORDINARY USE.

LIMITATION OF WARRANTY

THE ABOVE IS A LIMITED WARRANTY AND IS THE ONLY WARRANTY MADE BY TOUCHFAX WITH RESPECT TO THE LICENSED SOFTWARE. NO OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LICENSED SOFTWARE IS MADE BY TOUCHFAX. LICENSEE ACCEPTS ALL LICENSED SOFTWARE "AS IS" WITH ALL FAULTS AND WITHOUT

ANY OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

9.2 Licensee Module. TouchFax makes no warranty with regard to any Licensee Module and shall have no liability to Licensee in the event an Interface Program fails to perform due to any defect in a Licensee Module or on account of any instructions, documentation or specifications of Licensee.

9.3 Infringement Liability.

9.3.1 Provided Licensee gives TouchFax prompt written notice of a claim or potential claim under this Section 9.3.1 together with all evidentiary assistance reasonably required by TouchFax, and TouchFax is given complete control of the defense thereof, TouchFax agrees to defend at its expense any claim brought against Licensee to the effect that Licensee's proper use of the Licensed Software in the form delivered to Licensee and in accordance with the terms of this Agreement (but not including delivery of any Licensee Services or Services through a Licensee Module) infringes any copyright, patent or trade secret in which the complaining party has a lawful interest, and TouchFax shall, with respect to any such claims pay the amount of any costs and damages finally awarded against Licensee after exhaustion of all appeals, if any.

9.3.2 Provided TouchFax gives Licensee prompt written notice of a claim or potential claim under this Section 9.3.2 together with all evidentiary assistance reasonably required by Licensee, and Licensee is given complete control of the defense thereof, Licensee agrees to defend at its expense any claim brought against TouchFax to the effect that the delivery of any Licensee Services or Services through a Licensee Module infringes any copyright, patent or trade secret in which the complaining party has a lawful interest, and Licensee shall, with respect to any such claims pay the amount of any costs and damages finally awarded against TouchFax after exhaustion of all appeals, if any.

9.4 Limitation of Liability. Except as provided in Section 9.3.1 and as limited by Section 9.1, TouchFax's total liability for all claims of any kind arising out of or relating to this Agreement or any breach hereof by TouchFax, whether in contract, tort (including but not limited to strict liability and negligence), warranty, or other legal or equitable grounds, shall be limited to money damages and the aggregate amount thereof shall in no event exceed an amount equal to all License Fees actually received by

TouchFax under this Agreement during the 12 month period immediately preceding the date on which the first such claim arose. Licensee shall not offset or withhold payment of any License Fees, Transaction Fees, Programming Charges, Reimbursable Expenses or Billing Service Fees on account of any breach or alleged breach of warranty or of this Agreement or the Purchase Agreement by TouchFax, and all of the same shall continue to be due and payable notwithstanding any such breach or alleged breach.

EXCEPT AS PROVIDED IN SECTION 9.3.1 HEREOF, IN NO EVENT SHALL TOUCHFAX BE LIABLE TO LICENSEE FOR ANY ACTUAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, ARISING OUT OF THIS AGREEMENT OR ANY BREACH HEREOF BY TOUCHFAX WHETHER IN CONTRACT, TORT OR FOR BREACH OF WARRANTY, EVEN IF TOUCHFAX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY PARTY OTHER THAN LICENSEE.

ARTICLE X - CONFIDENTIALITY

10.1 Confidential Information. As used herein the term "Confidential Information" means any and all data and information of or relating to the disclosing party (a) which the receiving party receives or of which it becomes aware or with which it comes in contact as a consequence of or in connection with this Agreement; (b) which has value to the disclosing party and is not generally known by its competitors; and (c) which is treated by the disclosing party as confidential. Provided, Confidential Information does not include any data or information which is already known to the receiving party at the time it is disclosed to the receiving party, or which before being divulged by the receiving party (i) has become generally known to the public through no wrongful act of the receiving party; (ii) has been rightfully received by the receiving party from a third party without restriction on disclosure and without, to the knowledge of the receiving party, a breach of an obligation of confidentiality running directly or indirectly to the disclosing party; (iii) has been approved for release by a written authorization of the disclosing party; (iv) has been disclosed pursuant to a requirement of a governmental agency without similar restrictions or other protections against public disclosure, or is required to be disclosed by operation of law, provided the receiving party shall have first given written notice of such required disclosure to the disclosing party, made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which disclosure is required, and taken reasonable steps to allow the disclosing party to seek to protect the confidentiality of the information required to be disclosed; (v) is independently developed by the receiving party

without use, directly or indirectly, of any Confidential Information received from the other party; or (vi) is furnished to a third party by the disclosing party without restriction on the third party's right to disclose the information. Confidential Information shall include, but shall not be limited to, information relating to, contained in or consisting of the disclosing party's business, intellectual property, ideas, concepts, notes, memoranda, products, processes, financial condition, source codes, object codes, trade secrets, commercial secrets, industrial secrets, work in process, research, developments, technology, methods, strategies, drawings, designs, computer software, patent applications, patents pending, and other similar information.

10.2 Preservation. Each party shall use the same care and discretion, but in no event less than reasonable care and discretion, to prevent unauthorized use, disclosure, publication or dissemination of the other party's Confidential Information as it employs with similar information of its own.

10.3 Nonuse and Nondisclosure. Neither party shall use for any purpose or distribute, disclose or disseminate to others any Confidential Information of the other party without the express written consent of that party, except as specifically permitted in this Article X or as directly necessary in the performance of this Agreement.

10.4 Employees and Contractors. Disclosure by either party of the Confidential Information of the other party may be made only to employees, agents or independent contractors of the receiving party who are directly involved in performing under this Agreement and have a specific need to know such information. Each party's employees and contractors shall be bound by the restrictions in this Article X.

10.5 Materials. Within 15 days following receipt of a written request referring to this Article X from either party, the other party will deliver to the requesting party all tangible materials and all copies thereof containing or embodying any Confidential Information received from the requesting party.

10.6 Effective Date. The covenants of confidentiality in this Article X will apply after the date of this Agreement to any Confidential Information disclosed by the parties, whether prior to or after such date, and will continue during the term of this Agreement and for a period of four years after the date of expiration or termination of this Agreement.

10.7 Proprietary Rights.

10.7.1 Licensee acknowledges the proprietary rights of TouchFax in and to the Source Code and the Licensed Software, including but not limited to unpublished modifications of the Source Code and the Licensed Software, correspondence, private discussions and memoranda relating to technical matters pertaining to the Source Code and the Licensed Software, and all applications thereof and other supporting material and data, and further acknowledges that TouchFax considers all of the same to be trade secrets, in that they involve processes and compilations of information which are secret, confidential and not generally known to the public and which are the product of TouchFax's expenditure of time, effort, money and/or creative skills. No ownership interest in the Source Code, the Licensed Software, any of TouchFax's Confidential Information, any of the Trademarks or any of TouchFax's trade secrets is transferred or assigned to Licensee pursuant to this Agreement.

10.7.2 Licensee shall not, under any circumstances, directly or indirectly copy (other than a backup for each unit of Designated Hardware), decompile or reverse engineer all or any part of the Licensed Software or the Source Code.

10.7.3 Licensee shall not remove any copyright or patent notice or trade secret legend from any copy of the Licensed Software or the Source Code or any documentation, and Licensee shall not assert and shall not represent to any third party that it has any ownership rights in, or the right to sell, transfer or sublicense, the Licensed Software or the Source Code.

ARTICLE XI - TRADEMARKS

11.1 TouchFax's Trademarks. One TouchFax Trademark will be affixed to the Designated Hardware on a logo plate no larger than 3" x 2", and will be displayed by the Licensed Software by copyright and/or patent notice or otherwise. Licensee shall not remove, conceal, alter or deface the logo plate or the TouchFax Trademark from or on the Designated Hardware or Licensed Software or alter any Designated Hardware or Licensed Software. TouchFax grants Licensee a limited non-exclusive and non-transferrable license without right of sublicense to use and display the Trademarks solely in the manner in which TouchFax has displayed them on the Licensed Software and Designated Hardware, and to reproduce the Trademarks in advertisements and other promotional materials relating to Designated Systems during the term of this Agreement. Licensee shall include an appropriate trademark notice

in any such media and materials indicating the Trademarks are registered and/or owned by TouchFax. All advertising materials of Licensee containing any of the Trademarks or referring to Designated Systems or any TouchFax Services shall be subject to prior review and approval by TouchFax. Licensee shall not engage in any conduct which interferes with the integrity of the Trademarks or TouchFax's business image. Upon expiration of this Agreement, and provided Licensee is no longer using the Licensed Software or offering any TouchFax Services, Licensee may discontinue displaying the Trademarks.

11.2 Third Party Trademarks. Licensee agrees that all trademarks, trade names and service marks of Third Party Licensors ("Third Party Trademarks") which are displayed on Designated Systems and related materials shall be entitled to the same protection afforded the Trademarks under Section 1.20 and this Article XI. Licensee shall comply with all specifications and guidelines of TouchFax with regard to the use, display and promotion of Third Party Trademarks. All Third Party Trademarks displayed or utilized by Licensee shall be appropriately identified by ownership in accordance with such specifications and guidelines. All advertising materials of Licensee containing any Third Party Trademarks or referring to Services identified by Third Party Trademarks shall be subject to prior review and approval by TouchFax. Subject to the foregoing, Licensee shall have and is hereby granted a limited, non-exclusive non-transferable sublicense without right of further sublicense to utilize Third Party Trademarks in connection with the provision of TouchFax Services licensed to TouchFax by Third Party Licensors.

11.3 Company Name. Licensee shall not use the name "TouchFax" or any of the Trademarks in any corporate or fictitious name of Licensee, its subsidiaries, divisions or affiliates.

ARTICLE XII - TERMINATION, INJUNCTIVE RELIEF AND ARBITRATION

12.1 Discontinuation of Use. Unless this Agreement has already expired or terminated, the rights granted Licensee hereunder shall automatically terminate as to each package of Licensed Software when Licensee permanently discontinues use of the particular Designated System unit of which the Licensed Software was, prior to such discontinuation, a part. However, before Licensee may cease using any unit of Designated Hardware or cease using the Licensed Software on that unit, Licensee shall deliver to TouchFax a certificate executed by a responsible officer of Licensee identifying the serial number of the unit and certifying that not less than \$5,000 in Cumulative License Fees have been paid on that unit and that all copies of the Licensed Software for that unit have been returned to TouchFax. The certificate shall be

accompanied by all such copies of the Licensed Software and payment in full of the \$5,000 Cumulative License Fee, or balance thereof, applicable to that unit. Notwithstanding any discontinuation of use of the Licensed Software on any unit of Designated Hardware, except as permitted in Section 11.1, Licensee shall not remove the TouchFax Trademark from the Designated Hardware without the written consent of TouchFax.

12.2 Term and Termination.

12.2.1 This Agreement shall continue in effect until terminated by mutual written agreement of TouchFax and Licensee. Provided, this Agreement may be terminated by TouchFax by written notice to Licensee in the event (a) Licensee fails to pay any License Fees, Transaction Fees, Programming Charges, Reimbursable Expenses or Billing Service Fees within 30 days after the date of written notice of non-payment by TouchFax; or (b) in the event of material failure by Licensee to observe any covenant contained in Section 2.2 or Article XI. In addition, either party (the "Non-Defaulting Party") may terminate this Agreement for cause by giving written notice thereof to the other party (the "Defaulting Party"). For purposes of this Agreement, "cause" shall be limited to: (i) the bankruptcy, insolvency, dissolution, assignment for the benefit of creditors, receivership or cessation of business of the Defaulting Party; (ii) the failure of the Defaulting Party to observe any covenant contained in Article X or Section 13.3 of this Agreement; or (iii) any breach by the Defaulting Party of any of the other provisions of this Agreement which is not cured to the reasonable satisfaction of the Non-Defaulting party within 30 days after the date of written notice from the Non-Defaulting party setting forth the nature of such breach. However, if the nature of the breach is such that it cannot reasonably be cured within 30 days, the Defaulting Party shall have a reasonable period of time not exceeding 30 additional days to cure the breach, provided it commences to cure within the initial 30 day period and diligently prosecutes the same thereafter.

12.2.2 Upon termination of this Agreement for any reason, (a) all licenses and sublicenses herein granted to Licensee shall immediately terminate and shall be of no further force or effect; (b) Licensee shall make no further use of the Licensed Software, the Trademarks or any Third Party Trademarks; and (c) all License Fees, Transaction Fees, Programming Charges and Billing Service Fees earned and Reimbursable Expenses incurred by TouchFax as of the date of expiration or termination shall be paid in full by Licensee within 30 days after the date of TouchFax's invoice. License

Fees shall be prorated as of the date of expiration or termination.

12.3 Return or Destruction. Within 30 days after expiration or termination of this Agreement for any reason, Licensee shall, at TouchFax's request (a) destroy or deliver to TouchFax all copies of the Licensed Software and all documentation thereof in the possession of Licensee, its affiliates, agents or assigns; (b) destroy or deliver to TouchFax all materials or media on which any of the Trademarks or Third Party Trademarks are displayed; (c) remove all Trademarks from the Designated Hardware, but only if requested by TouchFax; and (d) acknowledge by affidavit, if requested by TouchFax, that the Licensed Software and all related materials and all materials or media which display the Trademarks and/or Third Party Trademarks have been destroyed or returned to TouchFax, and (if requested by TouchFax) that all Trademarks have been removed from the Designated Hardware.

12.4 Injunctive Relief. TouchFax may obtain injunctive relief against any breach or threatened breach by Licensee of the provisions of Article XI, and either party may obtain injunctive relief against any breach or threatened breach by the other party of the provisions of Article X, without the necessity of posting bond or proving lack of an adequate remedy at law.

12.5 Arbitration. With the exception of an action for injunctive relief under Section 12.4, any dispute, controversy or claim arising out of or relating to this Agreement or any breach hereof shall be resolved by arbitration in accordance with the Rules of the American Arbitration Association ("AAA"), as amended, except as modified hereby.

12.5.1 Unless otherwise agreed by TouchFax and Licensee, the arbitration panel shall consist of three arbitrators, one to be appointed by TouchFax and one to be appointed by Licensee, with the third to be appointed by the two arbitrators appointed by TouchFax and Licensee. If either of the parties fails to appoint an arbitrator within 30 days after receipt of notice of the appointment by the other of its arbitrator, or if the two arbitrators fail to appoint a third, then the AAA will have the power, at the request of either party, to make the appointment(s) which have not been made as contemplated above.

12.5.2 The arbitrators shall not have the power of amiable compositeurs. The arbitration proceedings shall be held at a location agreed upon by TouchFax and Licensee. Provided, if TouchFax and Licensee fail to agree on a location within 30 days, at the request of either party, the arbitrators shall establish the location. Both parties shall be entitled to representation by counsel, to appear and

present oral and written evidence and argument, to compel the testimony of witnesses and the production of documents, to obtain a written list of the other party's witnesses and documents prior to the hearing, and to examine and cross-examine witnesses. The substantive law governing this Agreement shall also govern the arbitration proceedings. The decision of a majority of the arbitrators shall be controlling on all issues. The arbitral award shall be in writing and shall explain the reasons for the award and shall be final and binding on TouchFax and Licensee. The expense of arbitration shall be shared equally by the parties unless otherwise decided by the arbitrators.

12.5.3 Each party agrees that final judgment on an arbitral award rendered against it in any action or proceeding relating to this Agreement shall be conclusive and may be enforced, to the extent permitted by applicable law, in any jurisdiction within or without the Territory by suit on the judgment, a certified copy of which shall be conclusive evidence thereof, or by such other means provided by applicable law.

12.6 Service of Process. Each party consents to service of process upon it in any proceeding brought pursuant to Section 12.4 or 12.5 by mailing copies of any notice or pleadings thereof by registered mail, postage prepaid, return receipt requested, to it at its address set forth in Section 13.5. The foregoing shall not limit the right of either party to serve process in any other manner permitted by applicable law and shall not limit the ability of either party to bring any such proceeding or to obtain execution of any judgment rendered in any such proceeding in any other jurisdiction in which the other party or any of its property or assets may be found.

ARTICLE XIII - GENERAL

13.1 Independent Contractors. Nothing contained herein shall constitute TouchFax and Licensee as partners, agents, joint venturers or in any capacity other than licensor and licensee of computer software and seller and purchaser of equipment, respectively. TouchFax and Licensee are independent contractors. Neither shall have the right to bind or obligate the other in any manner whatsoever.

13.2 Publicity and Advertising. TouchFax shall not use the name, logo or trademarks of Licensee in any press release, business proposal, promotional literature, financial or annual report or similar materials without Licensee's prior written consent.

Provided, TouchFax may identify Licensee in such materials as a customer of TouchFax.

13.3 Assignment. This Agreement may not be assigned by either party without the express, written consent of the other party, which consent shall not be unreasonably withheld. Provided, either party may assign this Agreement in connection with a merger, consolidation, reorganization or sale of all or substantially all of its assets, provided the assignee agrees to be bound by the terms and provisions hereof. Any attempted assignment in contravention of this Section 13.3 shall be null and void.

13.4 Force Majeure. With the exception of Licensee's obligations under Articles VI and VII hereof, neither party shall be liable to the other for delay or failure to perform any obligation hereunder due to an event of force majeure, including but not limited to acts of God or of the public enemy, fire, storm, flood, explosion, earthquake, hurricane, riots, wars, hostilities, civil commotion, strikes or labor disputes, interruption of supply, law or regulation, governmental action, or any other cause beyond the control of that party.

13.5 Notices. Any notice or communication required or permitted to be given hereunder may be hand delivered or sent by registered or certified mail, return receipt requested, or by facsimile transmission:

If to TouchFax:	TouchFax Information Systems, Inc. 15520 College Boulevard Lenexa, KS 66219 Fax: (913) 599-5588
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If to Licensee:	TON Services, Inc. 50 West 990 South Brigham City, UT 84302 Fax: (801) 734-6556
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or to such other address or facsimile number of which either party may advise the other in writing.

13.6 Compliance with Law. Except as provided in the Purchase Agreement, Licensee shall obtain all required governmental permits and comply with all applicable laws and ordinances in connection with Licensee's operation of Designated Systems and the provision of Services to End Users. Licensee shall be responsible for compliance with all United States and foreign export and customs regulations in connection with the location or operation of Designated Systems in Canada or Mexico.

13.7 Taxes. Licensee shall collect and pay all taxes assessed by any jurisdiction on the provision of Services to End Users or the operation of Designated Systems, with the exception of income taxes payable by TouchFax on revenue received hereunder.

13.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and both of which, taken together, shall constitute one and the same instrument.

13.9 Further Assurance. At the request of either party, the other party shall execute and deliver such further instruments, documents, covenants, undertakings and assurances deemed necessary or desirable to implement the terms hereof.

13.10 Entire Agreement; Amendment. Together with the Purchase Agreement and all Schedules to this Agreement, this constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior expression of intent or understanding, oral or written, including but not limited to that certain Confidentiality Agreement dated September 9, 1992. The provisions of this Agreement are for the benefit of the parties hereto solely, and not for the benefit of any other person or entity. This Agreement shall not be modified, altered or amended except in writing and signed by TouchFax and Licensee.

13.11 Waiver. Any waiver of a failure or delay in performance shall be effective only if in writing and only in accordance with its terms. The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default and shall not act to amend or negate the rights of the parties under this Agreement.

13.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Kansas.

13.13 Indemnification.

13.13.1 Licensee shall indemnify TouchFax for any costs or damages TouchFax is required to pay arising out of Licensee's breach of this Agreement.

13.13.2 TouchFax shall indemnify Licensee for any costs or damages Licensee is required to pay arising out of TouchFax's breach of this Agreement, subject to the limitations in Article IX and elsewhere in this Agreement, and to compliance by Licensee, its employees and contractors, with TouchFax's warning labels, specifications, instructions and documentation.

13.14 Charges to End Users. TouchFax shall have no control over the rates charged by Licensee to End Users for Services provided through Designated Systems.

13.15 Severability. If any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable statute, rule of law or public policy, then such provision shall be considered inoperative to the extent of such invalidity, illegality or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal or unenforceable provision with a new provision which has the most nearly similar permissible economic effect.

13.16 Headings. Headings are included in this Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Agreement.

IN WITNESS WHEREOF, TouchFax and Licensee have set their hands as of the date first above written.

TOUCHFAX INFORMATION SYSTEMS,
INC.

TON SERVICES, INC.

By: 

By: 

Title: CHAIRMAN

Title: P. P. Hagg

"TouchFax"

"Licensee"

SCHEDULE 1.9

Initial Licensee Modules

- 1 - Truck Routing.
- 2 - Auto/RV Routing and Mapping.
- 3 - Truck Permitting.
- 4 - Electronic Callboard.
- 5 - TON Services Load Matching Application(s).

SCHEDULE 1.11

New Services

SCHEDULE 3.2

Development Protocols for Interface Programs

SCHEDULE 4.2

Development Protocols for Custom Software

SCHEDULE 1.1

Basic Services

Send a Fax:	No Transaction Fee
Receive a Fax:	No Transaction Fee
Make a Copy:	No Transaction Fee
Type a Memo:	No Transaction Fee
Funnybone Fax:	Transaction Fee of \$1.00 per access*

*Transaction Fees are payable only if TouchFax's cartoon images are used. The display mechanisms for a cartoon Service will be provided free of Transaction Fees.

SCHEDULE 1.3

Site Locations and Serial Numbers of Designated Hardware